

The Major Debates at the Constitutional Convention

In February 1787, Congress decided that a convention should be convened to revise the Articles of Confederation, the nation's first constitution. In May, 55 delegates came to Philadelphia, and the Constitutional Convention began. Debates erupted over representation in Congress, over slavery, and over the new executive branch. The debates continued through four hot and muggy months. But eventually the delegates reached compromises, and on September 17, they produced the U.S. Constitution, replacing the Articles with the governing document that has functioned effectively for more than 200 years.



Delegates at the Constitutional Convention wait their turns to sign the U.S. Constitution. (Library of Congress)

be held in Philadelphia “for the sole and express purpose of revising the Articles of Confederation . . . and to render the Federal Constitution adequate to the exigencies of Government and the preservation of the Union.”

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In 1781 in the midst of the Revolutionary War, the 13 states had agreed to establish a new central government under the Articles of Confederation and Perpetual Union. The Articles created a confederation of states: Each state retained “its sovereignty, freedom, and independence.” The weak central government consisted of Congress, a single house in which each state had only one vote. No other branch of government existed: no executive or judiciary. And the Congress had no power to regulate trade or to levy and collect taxes.

By 1787, debts from the Revolutionary War were piling up, and many states had fallen behind in paying what they owed. States were imposing tariffs on each other and fighting over borders. Britain was angry because pre-war debts were not being paid, and it was refusing to honor the treaty that had ended the war (the Paris Treaty of 1783). Recognizing that things were not going well, Congress declared, on February 21, 1787, “that there are defects in the present Confederation” and resolved that a convention should

Building Democracy

The process of building democracy and democratic institutions is long and ongoing. Articles in this edition of *Bill of Rights in Action* examine historical and current examples of this process. The first article looks at the debates over the U.S. Constitution at the Constitutional Convention. The second article explores the medieval beginnings of Parliament, the first great body of representative government. The last article examines the history of American public schools and how we are preparing our young people to participate in our democracy.

U.S. History: The Major Debates at the Constitutional Convention

World History: King and Parliament in Medieval England
Current Issue: Every New Generation

Guest writer Lucy Eisenberg, Esq., contributed the article on the debates at the Constitutional Convention. Our longtime contributor Carlton Martz wrote on the beginnings of Parliament. CRF's vice president, Marshall Croddy, contributed the article on preparing young people for democracy.

On May 25, the convention went into session at the Philadelphia statehouse. George Washington was elected the presiding officer. The delegates quickly decided that their discussions should not be made public and that “nothing spoken in the House be printed, or otherwise published or communicated.” Because of the secrecy rule, the public knew little of what was happening inside the Philadelphia statehouse. And without the careful notes taken by James Madison, who attended every session and carefully transcribed the proceedings, today we would know little about how the Constitution came into being.

Before the convention officially began, Madison and the other delegates from Virginia had drafted a plan—the Virginia Plan—for correcting the Articles of Confederation. Their plan went well beyond amendments and corrections and actually laid out a completely new instrument of government. The plan provided for three separate branches of government: legislative, executive, and judicial. The legislative branch would have two houses, with the first house to be elected by the people of each state, and the second by the first house from a list created by the state legislatures.

Representation in Congress

The general outline of the Virginia plan was well received. But the question arose over how to elect the members of the two houses of Congress. For half the summer, the convention debated this issue. Some delegates strongly opposed having the people elect the lower house. Roger Sherman of Connecticut distrusted the notion of democracy. People, he said, “should have as little to do as may be about government” because they are “constantly liable to be misled.” Others spoke strongly in favor of popular vote, including George Mason of Virginia. Mason had faith in the common man and believed that the members of the lower house “ought to know and sympathize with every part of the community.”

The most difficult issue, however, was the question of how the states were to be represented in Congress. Should all the states have the same number of votes (as they did under the Articles of Confederation where each state had one vote)? Or should each state’s number of votes depend on the size of its population (or wealth) as proposed in the Virginia plan? This issue blocked the proceedings for many weeks. Representatives from small states believed that representation based on population would destroy their state’s rights. David Brearley of New Jersey said that representation based on population was unfair and unjust. “The large states,” he said, “will carry everything before them,” and the small states, like Georgia, “will be obliged to throw themselves constantly into the scale of some large one in order to have any weight at all.” Other delegates, like James Wilson of Pennsylvania, (one of the three big

states), argued that only representation based on population would be fair: For New Jersey, a state with about a third of the population of Pennsylvania, to have the same number of votes as Pennsylvania, “I say no! It is unjust.”

On June 30, the delegates from Connecticut proposed a compromise. According to Madison’s notes, they suggested that “the proportion of suffrage in the 1st branch should be according to the number of free inhabitants; and that in the second branch or senate, each state should have one vote and no more.” The proposal did not stop the bitter opposition and fierce debate. Some delegates began to leave in protest, and a sense of gloom settled over the statehouse. “It seems,” Sherman said, “that we have got to a point that we cannot move one way or another.” Washington wrote to Alexander Hamilton (who was away) that the crisis was so bad that he almost despaired of seeing a favorable outcome.

Intense debates lasted for two more weeks. Finally, the delegates came together and on July 16 agreed to the Connecticut compromise.

Representation in the lower house would be chosen by the people. The number of each state’s representatives would be based on the state’s total white population plus three fifths of its slave population. Each state would have one representative for every 40,000 inhabitants (later changed to one for every 30,000). Also each state would have at least one representative even if it did not have 40,000 inhabitants.

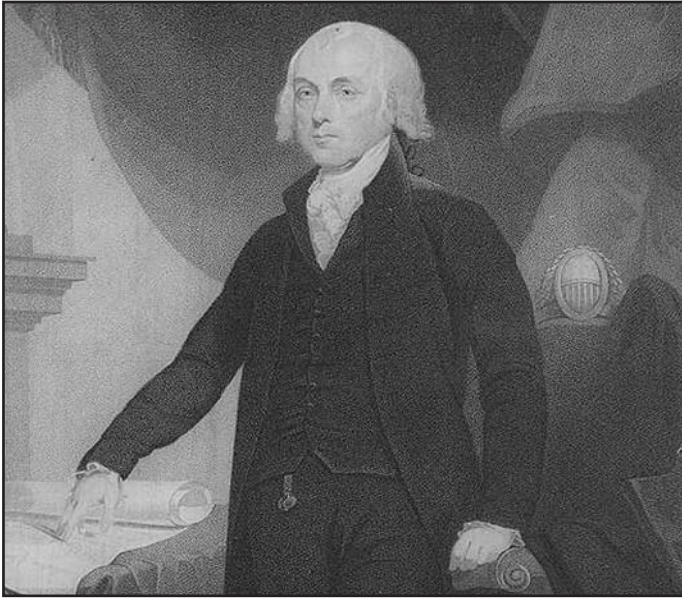
Each state would have two members in the Senate, chosen by the state legislature. The small states were jubilant, and the large states uncomfortable. But from then on, things moved more smoothly.

Giving Power to the President

After arriving at a compromise on electing the legislature, the convention addressed the other parts of the Virginia Plan. The plan called for a national executive but did not say how long the executive should serve. The executive would have “a general authority to execute the national laws.” The plan also resolved that the executive, working with a committee of judges, should have the power to review and veto laws passed by the Congress, “unless the act of the National Legislature be again passed.”

The delegates generally agreed on the need for a separate executive, independent of the legislature. (The executive would be called the “president.”) And they also agreed on giving the president the power to veto laws but only if his veto was subject to an override. As Madison noted:

Mr. Sherman was against enabling any one man to stop the will of the whole. No man could be found so far above all the rest in wisdom.



James Madison, the nation's fourth president, is often called the "father of the Constitution." He also drafted the Bill of Rights. (Library of Congress)

They came to a quick decision that the executive should have the power to veto legislation subject to a two-thirds override in both houses of the legislature. But they could not easily agree on how the executive should be elected.

Delegates proposed many different methods for electing the president. One alternative was direct election by the people, but this drew controversy. Some delegates did not trust the judgment of the common man. Others thought it was simply impractical in a country with many rural communities spread out over a huge area. George Mason of Virginia said:

... it would be as unnatural to refer the choice of a proper character for Chief Magistrate to the people, as it would be to refer a trial of colours to a blind man. The extent of the Country renders it impossible that the people can have the requisite capacity to judge of the respective pretensions of the Candidates.

Another alternative was to have the president chosen, either by the national or state legislatures. Some believed that an executive chosen by the national legislature would be a "mere creature" of the legislature without independent judgment.

Delegates voted more than 60 times before the method was chosen. The final agreement was to have the president elected by electors in each state who would be chosen "in such manner" as its legislature might "direct." Each elector would vote for two people (one of whom could not be an inhabitant of the same state.) The person with the most votes would become president. But if no person had a majority of the votes, the House of Representatives would choose the candidate from the top five (with each state's delegation casting one vote.)

Two more questions about the president also provoked intense debate: How long should the president's term be? And should limits be placed on the number of terms the president could serve? Underlying this debate was a fear of a monarchy, or of a despot, taking over the country. The convention finally decided on a four-year term, with no limit on how many times the president could be re-elected.

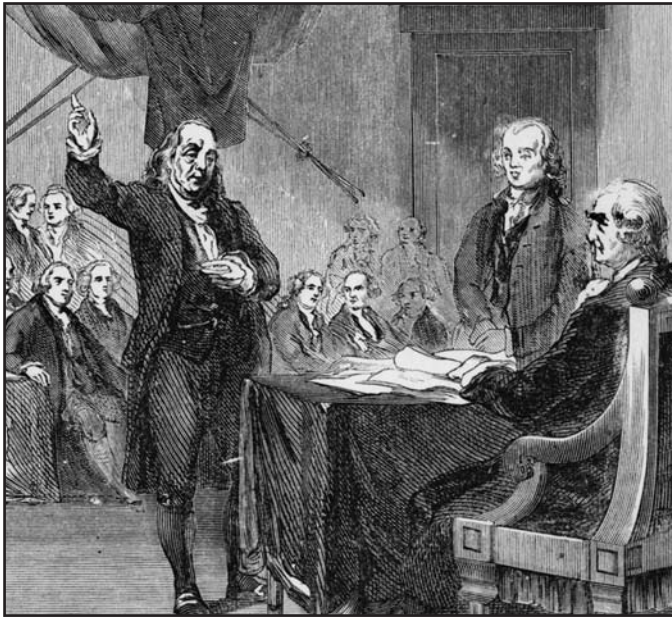
Stopping the Slave Trade

A deep disagreement arose over slavery. The economy of many of the Southern states depended almost entirely on agricultural products produced by slaves. To protect their economy, the Southern states insisted on two proposals. One was to ban Congress from taxing exports (to protect their agricultural exports). The second proposal was to forbid Congress from banning the importation of slaves. (In fact, the word "slave" was never used in the Constitution. The proposal was written to prohibit Congress from interfering with the importation "of such persons" as the states "shall think proper to admit.")

When the convention received the draft containing these proposals, another heated debate erupted. Opponents of the ban on exports objected on economic grounds. One delegate said that denying the power to tax exports would take away from the government "half of the regulation of trade." Another pointed out that taxing exports could become important "when America should become a manufacturing country."

Those opposed to slavery brought up issues of morality. Luther Martin of Maryland said that forbidding Congress from banning the importation of slaves was "inconsistent with the principles of the revolution and dishonorable to the American character." Gouverneur Morris of Pennsylvania said that slavery was a "nefarious institution" and a "curse of heaven on the states where it prevailed." George Mason of Virginia spoke at length about the horrors of slavery and criticized slave owners, who he called "petty tyrants," and the slave traders who, he said, "from a lust of gain embarked on this nefarious traffic."

Ultimately, the delegates who strongly opposed slavery realized that pressing against it would make it impossible for the states to come together. They worked out a compromise with the Southern states. They agreed that Congress could not tax exports and that no law could be passed to ban the slave trade until 1808. And in a final concession to the South, the delegates approved a fugitive slave clause. It required that any person "held to Service of Labour in one State" who escapes into another state "shall be delivered up on Claim of the Party to whom such Service or Labour may be due." (The requirement to return fugitive slaves was eliminated when the 13th Amendment abolished slavery.)



Benjamin Franklin, shown standing on the left in this engraving, was the oldest delegate to the Constitutional Convention. (Library of Congress)

Why No Bill of Rights?

The delegates had been meeting for almost four months when the Committee of Style presented a final draft of the Constitution on September 12. The draft contained a new provision, requiring trial by jury in criminal cases tried in the new federal court system. Trial by jury was considered one of many basic rights, and George Mason stood up and proposed including a full bill of rights, listing the basic individual rights that the government could not violate. He believed a bill of rights would “give great quiet to the people” and could be written up in just a few hours. Elbridge Gerry agreed and moved for a committee to prepare a bill of rights. Mason seconded his motion, but it was defeated, by a vote of 10 to 0. (Each state had one vote, and only 10 states were represented for that vote.)

It is not clear why the motion failed. Eight states already had constitutions that included a bill of rights, so one might have been drafted quickly. But Madison’s notes don’t explain the motion’s defeat. He quotes only the words of Roger Sherman who said that “the State Declarations of Rights are not repealed by this Constitution and, being in force, are sufficient.”

Three months after the Constitution was signed, Thomas Jefferson wrote to Madison saying that it had been a big mistake to omit a bill of rights. “A bill of rights,” he said, “is what the people are entitled to against every government on earth.” And many others agreed. When the Constitution was being ratified by the states, many people opposed the Constitution just because it did not contain a bill of rights. In Massachusetts, and in six other states, the ratifying conventions recommended adding a bill of rights

to the Constitution. And soon after the first Congress convened in 1789, it responded to the request of the seven states and approved constitutional amendments (drafted by James Madison). The states ratified 10 of the amendments, which became the Bill of Rights.

’Tis Done

On Monday, September 17, when the delegates met to sign the Constitution, Benjamin Franklin had prepared a speech. The Constitution may not be perfect, he said, but “I cannot help expressing a wish that every member of the Convention who may still have objections to it . . . to make manifest our unanimity, put his name to this instrument.” And all of the 44 delegates who were present did sign except for three, including Gerry of Massachusetts, who said that he feared “civil war” in his home state and wished that the plan had been put together “in a more mediating shape, in order to abate the heat and opposition of the parties.” The work was finished at 4 o’clock when, according to George Washington’s diary, the “members adjourned to the City Tavern, dined together and took a cordial leave of each other.”

When the document was presented to Congress and to the country, it surprised everyone. In fact, it provoked controversy in many states. But by July 1788, nine states had ratified it, and it went into effect. Elections were held, and on March 4, 1789, the first Congress and president, George Washington, took office under the new U.S. Constitution.

The Constitution was, as one commentator has said, “a bundle of compromises” that was designed to meet certain specific needs and to remedy the defects experienced under the Articles of Confederation. Compromises had been necessary at every point, and in some cases produced unforeseen results. But the Constitution succeeded beyond even the hopes of its strongest advocates. As Benjamin Rush wrote, after a celebration in Philadelphia: “’Tis done. We have become a nation.”

For Discussion and Writing

1. What were the Articles of Confederation? What problems did the Articles have?
2. Why do you think the delegates voted to keep their discussions secret? Do you think they should have? Explain.
3. What was the Virginia Plan? How did it differ from the Articles of Confederation?
4. What were the major debates over the Constitution? What compromises were reached in each? If you had been a delegate, would you have agreed to each of these compromises? Explain.

A C T I V I T Y

Should the Senate Be More Representative?

One of the major compromises in the Constitutional Convention was between the small states and big states. The small states wanted each state to have the same number of representatives in Congress. The big states wanted representation based on population. The compromise was to have one house of Congress (the House of Representatives) base its representation on population (with each state having at least one representative) and for each state to have two senators in the other house (the Senate) regardless of population.

This compromise has worked for more than 200 years. But critics claim that the Senate is undemocratic because it gives each state two senators regardless of population. Political writer Timothy Noah points out that “50 senators representing the 25 smallest states, and hence a mere 16 percent of the population, could . . . block passage of a bill favored by the other 84 percent of the population.”

Divide the class into small groups. Imagine that your group is a commission asked to make recommendations on the Senate. Do the following:

1. Read and discuss the section titled “Representation in Congress.”
2. Discuss what the advantages are to having the Senate as it is.
3. Discuss what the disadvantages are.
4. Decide on one of these options: (a) Leave the Senate as it is, (b) Make the Senate based on population, or (c) Make up your own option.
5. Be prepared to report your decision and reasons for it to the class.

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About Constitutional Rights Foundation

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